

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ePLUS INC.,)	
)	
Plaintiff,)	Civil Action No. 3:09-CV-620 (REP)
)	
v.)	
)	
LAWSON SOFTWARE, INC.,)	
)	
)	
Defendant.)	

**PLAINTIFF ePLUS INC.'S BRIEF IN OPPOSITION TO DEFENDANT LAWSON
SOFTWARE INC.'S MOTION *IN LIMINE* NO. 12 TO EXCLUDE RELEVANT AND
ADMISSIBLE EVIDENCE OF DEFENDANT'S DIRECT INFRINGEMENT**

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Defendant Lawson Software Inc.'s ("Defendant's") motion *in limine* is duplicative of a section of its brief in support of its motion for summary judgment. Copying, practically verbatim, the text of that section, Defendant argues (1) that *ePlus* has not come forward with any evidence that Defendant sells computers – as Defendant now contends is required for it to infringe the asserted "system" claims – and (2) that *ePlus* has not come forward with any evidence that Defendant, as opposed to Defendant's customers, performs certain method steps in the asserted method claims. Compare Defendant's Memorandum in Support of Motion *In Limine* No. 12, Dkt. No. 277 (June 18, 2010) with Defendant's Summary Judgment Brief, Dkt. No. 241 (June 11, 2010), at 18-20. *ePlus* has addressed these arguments in full in its opposition to Defendant's summary judgment motion (*ePlus* is filing its summary judgment opposition on the same day as the instant brief). *ePlus* incorporates this response by reference herein. As *ePlus* demonstrates in its summary judgment opposition, Defendant need not sell computers to directly infringe the asserted "system" claims because no claim language requires a computer itself, as opposed to software that is designed to operate on a computer, and, regardless, Defendant is a direct infringer because it makes the accused systems by installing its software on its customers' computer systems and then implementing a complete fully-functioning infringing system. Plaintiff *ePlus*, Inc.'s Brief in Opposition to Defendant's Motion for Summary Judgment (July 2, 2010) at 14-16. And, as *ePlus* also demonstrates in its summary judgment opposition, there is ample evidence that Lawson performs the method steps in the asserted method claims. *Id.*

The only new argument in Defendant's motion *in limine* is that to allow *ePlus* to present evidence at trial that Defendant is a direct infringer allegedly will cause jury confusion on the intent requirement for indirect infringement and on damages. Def's Br. at 5. This argument presupposes that the Court will agree with Defendant's summary judgment argument that *ePlus*

has insufficient evidence as to direct infringement, because it assumes that the jury will only consider indirect infringement. If this Court denies Defendant's request for summary judgment on this issue, as *ePlus* argues it should, then Defendant's confusion argument has no merit. Moreover, even if this Court were to grant Defendant summary judgment of no direct infringement, this Court should not exclude any of *ePlus*'s evidence—except perhaps the expert's ultimate opinion on direct infringement—because the same facts and evidence that *ePlus* relies on for its direct infringement claim also supports its indirect infringement claim.

The crux of Defendant's argument appears to be that the jury should not be permitted to hear any evidence of Defendant's activities prior to the filing date of this action because Defendant did not have the specific intent required for indirect infringement prior to that date. But *ePlus* disputes Defendant's position that it lacked the required specific intent prior to the filing of this suit. *ePlus*'s Brief in Opposition to Defendant's Motion for Summary Judgment (July 2, 2010) at 14-16. A jury should decide this issue. Moreover, evidence of the functionality of Defendant's accused products would still be relevant even if some of that evidence pre-dated the damages period. Therefore, regardless of this Court's decision on the direct infringement issue, *ePlus* should not be precluded from introducing evidence of Defendant's activities prior to the suit as part of its infringement case.

As its summary judgment opposition demonstrates, *ePlus* has presented entirely proper theories of direct infringement for the asserted claims, and has developed substantial evidence under those theories. Defendant's motion *in limine* should be denied in its entirety.

Respectfully submitted,

July 2, 2010

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of July, 2010, I will electronically file the foregoing

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